Statements by the United States at the Meeting of the WTO Dispute Settlement Body

Geneva,
April 18, 2008

1. **SURVEILLANCE OF IMPLEMENTATION OF RECOMMENDATIONS ADOPTED BY THE DSB**

A. UNITED STATES – SECTION 211 OMNIBUS APPROPRIATIONS ACT OF 1998: STATUS REPORT BY THE UNITED STATES (WT/DS176/11/ADD.65)

· Mr. Chairman, the United States provided a status report in this dispute on April 7, 2008, in accordance with Article 21.6 of the DSU.

· As noted in that status report, a number of legislative proposals that would implement the DSB's recommendations and rulings in this dispute have been introduced in the current Congress, in both the U.S. Senate and the U.S. House of Representatives.

· The U.S. Administration continues to work with Congress to implement the DSB's recommendations and rulings.

[Second intervention]

· We regret very much that some Members – including some whose record of protecting intellectual property rights appears less than robust – continue to criticize the U.S. commitment to intellectual property rights.

· These criticisms are completely unfounded. It is of course true that the United States remains a strong advocate of substantial protections for intellectual property internationally. However, the United States is also second to no one in providing strong intellectual property protection within its own territory.

· That said, we welcome these Members' commitment to intellectual property rights, and we look forward to working with all Members to secure the protection of intellectual property rights around the world.

· In response to the comments about "systemic concerns" about non-compliance, as we have said many times in the past, the record is clear: the United States has come into compliance, fully and promptly, in the vast majority of its disputes, thereby strengthening the dispute settlement system.

· As for the remaining few instances where our efforts to do so have not yet been entirely successful, such as this dispute, the United States continues to work actively towards compliance.

B. UNITED STATES – ANTI-DUMPING MEASURES ON CERTAIN HOT-ROLLED STEEL PRODUCTS FROM JAPAN: STATUS REPORT BY THE UNITED STATES (WT/DS184/15/ADD.65)

· The United States provided a status report in this dispute on April 7, 2008, in accordance with Article 21.6 of the DSU.

· As of November 23, 2002, the U.S. authorities had addressed the DSB's recommendations and rulings with respect to the calculation of antidumping margins in the hot-rolled steel antidumping duty investigation at issue in this dispute. Details are provided in the document numbered WT/DS184/15/ADD.3.

· The U.S. Administration will work with Congress with respect to the recommendations and rulings of the DSB that were not already addressed by the U.S. authorities by November 23, 2002.

C. UNITED STATES – SECTION 110(5) OF THE US COPYRIGHT ACT: STATUS REPORT BY THE UNITED STATES (WT/DS160/24/ADD.40)

· The United States provided a status report in this dispute on April 7, 2008, in accordance with Article 21.6 of the DSU.

· The U.S. Administration will work closely with the U.S. Congress and continue to confer with the European Communities, in order to reach a mutually satisfactory resolution of this matter.

· In this regard, we share the EC's goal of discussing how a mutually satisfactory solution to this dispute could be achieved, and we appreciate the EC's recent statements that it remains prepared to work with the United States towards that end.

D. EUROPEAN COMMUNITIES – MEASURES AFFECTING THE APPROVAL AND MARKETING OF BIOTECH PRODUCTS: STATUS REPORT BY THE EUROPEAN COMMUNITIES (WT/DS291/37/ADD.3 – WT/DS292/31/ADD.3 – WT/DS293/31/ADD.3)

· We thank the EC for its written status report and for its statement today.

· The reasonable period of time for EC compliance in DS291 expired on January 11, 2008. The issues covered in the dispute remain unresolved, even though nearly five years have passed since the United States filed its consultation request in May 2003. The commercial impact of this dispute is significant and growing.

· The EC has claimed progress towards compliance on the basis of the recent approval for import and use of GA-21 maize. The EC's handling of this application, however, in fact

exemplifies the serious concerns of the United States with delays in the EC approval system.

- The GA-21 application was first filed nearly 10 years ago, in May 1998. The application received a positive safety assessment from the EC's own scientific committee in September 2000, which is nearly 7 ½ years ago. Yet the EC failed to move the product forward in its approval process. For this reason, the DSB ruled that the EC's consideration of GA-21 was subject to undue delay, in breach of the EC's obligations under the SPS Agreement.[1]

- The application of that product was withdrawn in the face of the EC's endless delays and subsequently resubmitted in July 2005 under the EC's new biotech approval legislation. And again it faced delays. The applicant received no questions on the application for over 7 months.

- The safety assessment, which confirmed the product's safety, then took an additional 17 months, even though EC legislation provides a six-month period, and even though an EC scientific committee had already issued a positive safety assessment years before.

- And when this product – which had now received two positive assessments from EC scientific committees – was submitted to the EC member States for approval, member States failed to follow the scientific assessment and failed to grant approval. The result was further delays. The application was again submitted to the member States, this time at the level of the EC Council, and the EC Council again failed to grant approval. Only then, after an additional waiting period, was the product finally approved for import and use in the EC.

- In sum, the approval of GA-21 took nearly 10 years from the time an application was first submitted and nearly 7 ½ years from the time GA-21 received its first positive safety assessment from an EC scientific committee. Thus, the experience with GA-21 does not speak favorably of the EC's record but only emphasizes the problems with the EC's biotech approvals.

- Despite our concerns with the EC's actions concerning the approval of biotech products, the United States at this point looks forward to continuing its dialog with the EC. We continue to hope that the EC will take the steps necessary to resolve this dispute so that there will be no need for the United States to pursue further proceedings under the DSU.

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[1] *European Communities – Measures Affecting the Approval and Marketing of Biotech Products* (WT/DS291/R), para. 7.2142.

2. UNITED STATES – CONTINUED DUMPING AND SUBSIDY OFFSET ACT OF 2000: IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED BY THE DSB

A. STATEMENTS BY THE EUROPEAN COMMUNITIES AND JAPAN

- As the United States has already explained at previous DSB meetings, the President signed the Deficit Reduction Act into law on February 8, 2006. That Act includes a provision repealing the Continued Dumping and Subsidy Offset Act of 2000. Thus, the United States has taken all actions necessary to implement the DSB's recommendations and rulings in these disputes.

- We welcome Members' recognition that the 2006 Deficit Reduction Act does not permit the distribution of duties collected on goods entered after October 1, 2007.

- We therefore do not understand the purpose for which the EC and Japan have inscribed this item today.

- Furthermore, we note that in a dispute for which the panel report was recently circulated, the EC strongly advocated the position that a Member cannot state, for example, at a DSB meeting that a measure taken to comply by another Member is not consistent with that Member's WTO obligations, unless the Member has first had recourse to dispute settlement proceedings with respect to that measure. We therefore remain particularly surprised by the statements made by the EC at this meeting and several recent ones.

- With respect to comments regarding further status reports in this matter, as we have already explained at previous DSB meetings, the United States fails to see what purpose would be served by status reports repeating that the United States has taken all steps necessary to implement the DSB's recommendations and rulings in these disputes.

- With respect to the recent notification by the EC of the continuation of its suspension of concessions, the United States continues to review the action by the EC. As Members will recall, the DSB only authorized the suspension of concessions or other obligations as provided in the Award of the Arbitrator.

- Finally, we would like to comment on Members' statements that this legislation – though repealed – continues to cause trade distortions. We find this statement surprising.

- The United States recalls that, with one exception, none of the complaining parties in this dispute claimed that the CDSOA caused trade-distorting effects under the SCM Agreement. Indeed, none of the Members speaking today made such a claim.

- Furthermore, though one other Member did claim that the CDSOA caused trade-distorting effects under the SCM Agreement, those adverse effects claims were rejected. Members' comments alleging any trade-distorting effects are thus not based on any DSB recommendations and rulings.

· We therefore fail to understand the basis for Members' continuing statements that their trade with the United States is being distorted by virtue of the now-repealed CDSOA.

3. UNITED STATES – MEASURES RELATING TO ZEROING AND SUNSET REVIEWS

A. RECOURSE TO ARTICLE 21.5 OF THE DSU BY JAPAN: REQUEST FOR THE ESTABLISHMENT OF A PANEL (WT/DS322/27)

· The United States is disappointed that Japan is seeking the establishment of a panel given that the United States has explained to Japan the actions the United States has taken to comply with the DSB recommendations and rulings in this dispute.

· However, pursuant to our understanding with Japan, which was circulated to the DSB in document WT/DS322/26, the United States will accept establishment of a panel today.

· We will, of course, defend our position vigorously in this proceeding.

· The United States also wishes to note that some of the measures identified in Japan's panel request appear not to be measures taken to comply with the DSB's recommendations and rulings in this dispute. For example, Japan lists periodic review results in Annex I of its request that were issued prior to the adoption of the DSB's recommendations and rulings and, in some cases, prior to Japan's original request for consultations. These measures are therefore not within the scope of an Article 21.5 proceeding.

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